

(ATTACHMENT 11) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR028895
Contract Number: C026184
Vendor Number: V000870

MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

This Contract is being entered into this 1st day of May 2017 by and between **Pearson Education, Inc.** (“Contractor”) and Milwaukee Board of School Directors (“MPS”). This Contract is the result of an open competitive procurement, specifically Request for Proposal (RFP) 929.

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

In accordance with Contractor’s “Licensed Product Agreement – iLit Product”, attached hereto as Exhibit A and incorporated by reference, Contractor shall provide MPS with the rights to purchase iLit Suite for up to 7,000 licenses. Licenses are purchased on a “per seat” basis as outlined in § 2.2.1 of the Licensed Product Agreement. Product shall perform as indicated in the response to RFP 929. The cost per license for the Initial Term (“Program Fee” as defined in the Licensed Product Agreement) and each subsequent extension term (“Renewal Fee” as defined in the Licensed Product Agreement) shall be \$30.00. If MPS wishes to acquire more than 7,000 licenses for purchase, Contractor must receive approval from Melanie Stewart, Director of Student Performance & Improvement.

Contractor shall also provide professional development associated with the licenses. Contractor and MPS shall mutually agree upon the schedule and format of professional development. Contractor shall initially provide 48 free hours of professional development. The cost for professional development thereafter shall be \$317.00 per hour.

RFP 929 and Contractor’s Response to RFP 929 are incorporated herein by reference.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from May 1, 2017 through April 30, 2018 (“the Initial Term”), with the option to extend for two additional one-year periods. MPS will base its extension options on the following criteria for renewal to be rated by MPS personnel. A score equal to or below 59 is not passing and renewal will not be granted. A score between 60 and 84 will require specific action plans to be developed and approved prior to any extension being granted. A total score of 85 or more will be considered passing; however, 85 or more points does not guarantee renewal.

Criteria for Evaluation	Points
The intervention has been successfully administered via the computer or by a teacher.	5
The intervention performs as indicated in the evidence/research, <i>i.e.</i> , when used with fidelity produces academic achievement.	5
Interventions are clearly aligned to instruction and the acquisition of skills in their designated areas.	5
The utilization and fidelity of use is tracked electronically and broken down by district, school and grade level as needed.	5
Students using the program with fidelity show progress in closing achievement gaps.	5
The interventions have universally designed activities.	5
Students receive immediate feedback on progress within the program.	5
Accommodations increase the access of students with special needs.	5
The intervention has all materials included for lessons, formative assessments and necessary consumable products and an electronic tracking system to monitor student use.	5
Intervention administration works successfully within MPS technological requirements.	5
Vendor provides prompt technical support.	5
Communication of changes, updates or other technology related issues are done well in advance of the event so planning can occur.	5
Reports are accurate or reported errors are promptly corrected.	5
At the high school level, scores are related to college readiness.	5
Score reports provide data related to the scope of the intervention.	5
Reports provide information on student closing achievement gaps	5
Reports are easily accessible in all formats provided by vendor.	5
Interfaces easily with MPS’s universal screening tools (<i>i.e.</i> , STAR).	5

Costs were as described without hidden charges emerging after purchase.	5
Cost of consumables was clearly delineated (or permission to reproduce locally).	5
Vendor provided sufficient professional development so staff is able to intervene students efficiently.	5
Vendor provided sufficient professional development so staff is able to access reports.	5
Vendor provided sufficient professional development so staff is able to set up the system throughout MPS.	5
If original professional development was deemed insufficient by MPS, vendor provided additional professional development at no cost during the implementation term.	5
A project manager is consistently available and helpful.	5
Total	100

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Total compensation under this Contract in the Initial Term shall not exceed \$210,000.00.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools
 ATTN: Melanie Stewart
 5225 W. Vliet Street
 Milwaukee, WI 53208

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. MPS will notify Contractor of any non-appropriation as soon as reasonably possible after such determination is made. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Contractor shall indemnify MPS and hold MPS harmless against any loss, damage, liability, claim or expense resulting from injury or death to any person or from damage to any tangible property resulting from Contractor's performance of the agreement. Notwithstanding the foregoing, Contractor shall only be responsible for any loss, damage, liability, claim or expense to the extent

that (1) it is alleged and established that such loss, damage, liability, claim or expense was occasioned by the negligence or willful misconduct of Contractor or its employees or agents; and (2) Contractor is given prompt written notice of any such claim.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. BACKGROUND CHECKS

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at 564@milwaukee.k12.wi.us), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, Commercial General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be included as an additional insured under Contractor's commercial general liability insurance. A certificate of insurance will be provided as evidence of all required insurances of Contractor and shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference.

9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight

must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

10. IRREPARABLE HARM

The breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

11. TERMINATION

Termination shall be handled as set forth in § 7.2 of the Licensed Product Agreement.

12. PARAGRAPH INTENTIONALLY OMITTED

13. PARAGRAPH INTENTIONALLY OMITTED

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notice terms are found in § 13 of the Licensed Product Agreement. Notices to MPS shall include a copy to: Contract Law Coordinator, 5225 West Vliet Street, Room 160, Milwaukee, WI 53208.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract, its Exhibit A, RFP 929, and Contractor's Response to RFP 929 constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information

developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

Within thirty business days of receipt of MPS' written request, Contractor will return all documents, records, and copies thereof if obtained during the development of the work product covered by this Contract.

27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS's Executive Director of Communications & Outreach.

28. ORDER OF PRIORITY

The parties have negotiated the integration of Contractor's Licensed Product Agreement with MPS's Professional Services Contract. It is the intent of the parties that, in the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Contract; 2) the Licensed Product Agreement; 3) RFP 929; and 4) Contractor's Response to RFP 929.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. CONTRACT COMPLIANCE REQUIREMENT

The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 0 hours. The Career Education requirement for this Contract is 20 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor # V000870)

By: [Signature]
Authorized Representative

Date: 4.26.2017
Pearson Education, Inc.
PO Box 6820
Chandler, AZ 85246

SSN / FEIN:
Budget Code: SYS-0-0-AMT-RH-ECTS

Reviewed by Risk Management:
By: [Signature]

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: [Signature]
Kari H. Race, J.D., Acting Director
Procurement and Risk Management

Date: 4/29/17

By: [Signature]
Darlene B. Driver Ed.D.,
Superintendent of Schools

Date: 5/3/17

By: [Signature]
Mark A. Sain, President
Milwaukee Board of School Directors

Date: 5-4-17

Date: 6/15/17

Exhibit A to Professional Services Contract dated May 1, 2017



PEARSON

IMPORTANT: DO NOT ALLOW LICENSED PRODUCT (AS DEFINED BELOW) TO BE USED WITHOUT READING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CUSTOMER (AS DEFINED BELOW) IS NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, PLEASE PROMPTLY NOTIFY PEARSON WITHIN TEN (10) DAYS OF RECEIPT. BY USING THE LICENSED PRODUCT AS PERMITTED BY THIS AGREEMENT, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

LICENSED PRODUCT AGREEMENT – iLit PRODUCT

This Licensed Product Agreement (the “Agreement”) is between Pearson Education, Inc. (“Pearson”), and the school, school district or other entity licensing the iLit product from Pearson (“Customer”), and contains software license terms that are applicable to the iLit product, as well as terms applicable to support and maintenance, and other service offerings that may be provided by Pearson in connection with the iLit product.

1. DEFINITIONS. The following terms, when capitalized in this Agreement, shall have the following meanings:

1.1 “Documentation” shall mean all written user information, whether in electronic, printed or other format, delivered to Customer by Pearson with respect to the Licensed Product, including, but not limited to, user manuals and training materials.

1.2 “Error” shall mean a reproducible and material failure of the Licensed Product to operate in substantial conformance with the applicable description and specifications contained in the standard user Documentation delivered with the Licensed Product. User mistakes are not Errors as defined herein. Errors may be due to problems in the Licensed Product, the Documentation, or both.

1.3 “Fix” shall mean a patch, service pack or similar modification to the Licensed Product that Pearson, in its discretion, deems ready for distribution and makes generally available to eligible customers on an interim basis (prior to issuance of an Update or Version Upgrade) to correct programming Errors that prevent or obstruct normal operation of the Licensed Product in accordance with the applicable then-current Documentation.

1.4 “Licensed Product” shall mean Pearson’s iLit product, which is a software application that delivers instructional and reading content on an Apple® iPad® mobile digital device. As such, Licensed Product when used herein refers to: (a) all instructional and reading content made available to Customer and its users as part of the iLit product; (b) the application through which this content is delivered to Customer for use on an Apple iPad; and (c) all related Documentation. This Agreement applies only to the iLit product, and not to other products or content delivered by Pearson or its affiliates, even if ordered concurrently with the iLit product. Various content packages are available to be licensed in connection with the iLit product. Customer shall receive access only to the content ordered by Customer and for which Customer has paid the applicable fees. To the extent that Pearson releases and makes available to Customer any future Fixes, Updates or Version Upgrades to the iLit product licensed by Customer hereunder, such Fixes, Updates or Version Upgrades will also be deemed Licensed Product and are subject to, and will be governed by, the terms of this Agreement.

1.5 “License Term” shall mean the term of Customer’s license to access and use the Licensed Product, including the initial term described in Section 7.1 and any renewals thereof pursuant to such Section. The License Term may vary for licenses purchased at different times.

1.6 “Licensed Sites” shall mean those schools or other sites at which Customer is authorized to use the Licensed Product. The number of Licensed Sites at which Customer will be authorized to use the Licensed Product is limited based on the number of licenses purchased by Customer.

1.7 “Order Documentation” shall mean a price quotation, invoice or other documentation provided by Pearson specifying the Licensed Product

and/or associated support or services being offered to Customer, which has been accepted by Customer as evidenced by Customer’s submission to Pearson of a purchase order or other written acknowledgment of Customer’s order for Licensed Product or by Customer’s payment of applicable fees.

1.8 “Program Fee” shall mean the fee payable to Pearson for the initial purchase of licenses for the Licensed Product which fee will entitle the Customer to use and access the Licensed Product for the initial License Term specified in Section 7.1.

1.9 “Renewal Fee” shall mean a fee payable to Pearson for hosting, maintenance and support services for the Licensed Product, which are required for continued access to the Licensed Product after the initial License Term for which the Program Fee was paid. The Renewal Fee is typically charged to Customer on an annual basis unless other arrangements have been made (e.g., prepayment by Customer of the Renewal Fee for multiple years).

1.10 “Update” shall mean a modification to the Licensed Product that Pearson, in its discretion, deems ready for distribution and makes generally available to eligible customers as an Update. Updates may include Fixes, together with such other enhancements or modifications to the Licensed Product that Pearson may, in its discretion, develop and deem ready for distribution.

1.11 “Version Upgrade” shall mean a modified or enhanced version of the Licensed Product that Pearson, in its discretion, deems ready for distribution and makes generally available to those customers that pay an additional license fee for such version. Pearson reserves the right to determine in its sole discretion which modifications or enhancements to the Licensed Product qualify as a Version Upgrade or an Update.

2. LICENSE.

2.1 License Grant. Subject to the terms and conditions set forth herein, Pearson grants to Customer a restricted, non-exclusive, non-transferable license to use the Licensed Product at the Licensed Sites for the License Term. The Licensed Product shall be accessed only by students or authorized personnel of Customer. If Customer subsequently purchases additional licenses, such licenses shall also be subject to the terms and conditions of this Agreement (unless Pearson provides new terms and conditions to Customer at the time such additional licenses are purchased, in which case such new terms and conditions shall apply). Customer acknowledges and agrees that Pearson may, from time to time and at its sole discretion, (i) add new content to the Licensed Product, or (ii) limit, modify or discontinue any existing content made available within the Licensed Product.

2.2 Licensing Models. Pearson offers the following licensing models for the Licensed Product:

2.2.1 Per Seat. Licenses are available for purchase on a “per seat” basis, entitling one named student to be assigned to use certain grade-

level specific instructional and reading content contained within the Licensed Product as set forth in the Order Documentation. After that student completes all assignments or otherwise leaves the program, the seat may be reassigned by Customer to another student. For example, if Customer purchases sixty (60) "per seat" licenses for one year for Grade 9 content, Customer will be able to assign sixty (60) students to use the Grade 9 content in the Licensed Product. If two of these students leave their school or otherwise cease using the Licensed Product, Customer may assign two new students to take over those seats. Thus, in this example with sixty (60) licenses, Customer is limited at any given time to sixty (60) students assigned to the Grade 9 content, but Customer may replace students who are no longer using the program with other students for the balance of the applicable License Term.

2.2.2 Other Models. Other licensing models in addition to "per seat" licensing may be available, in which case additional details regarding such options will be included on the Order Documentation.

3. OWNERSHIP; RESTRICTIONS ON USE.

3.1 Title. The Licensed Product is protected by trade secret and/or copyright law and is proprietary to Pearson and/or its licensors. Title to all complete or partial copies, and all applicable rights to copyrights, patents and trade secrets in the Licensed Product and any derivative works thereof, are and shall remain the property of Pearson or its licensors.

3.2 Confidentiality. Customer shall maintain the confidentiality of the Licensed Product, and, except as expressly provided herein, Customer shall not, and shall not allow any other person or entity to, reproduce, copy, create derivative works of, repost, distribute, download or otherwise transfer to any other system or media any portion of any Licensed Product without the written consent of Pearson; provided, however, that Customer may make printed copies of the Documentation for Customer's internal use. Customer shall not, and shall not allow others to, reverse engineer any software that is provided as part of the Licensed Product.

3.3 Access. Pearson reserves the right to require Customer to suspend access to the Licensed Product to any end user (i) who attempts to "hack" the Licensed Product or otherwise use portions of the Licensed Product not intended to be accessed by such end user; (ii) who uses log-in credentials of another user without authorization; or (iii) whose actions otherwise violate the terms of this Agreement or any terms of use posted or made available to end users within the Licensed Product.

3.4 Compatibility. Customer shall be responsible for the provision of a computing environment compatible with Pearson's standard specifications for the Licensed Product, including maintaining all necessary connections to the Internet as may be required to access the Licensed Product. Specifications relating to the foregoing are available upon request. Such specifications are subject to change over time based on changes in technology or Licensed Product delivery methods.

4. SERVICES

4.1 Support and Maintenance. For as long as Customer maintains an active license to the Licensed Product by paying Pearson's Program Fees and Renewal Fees, as applicable, Pearson shall provide the following services:

4.1.1 Fixes and Updates. Customer will receive, throughout each License Term, any Fixes and Updates released by Pearson for those portions of the Licensed Product licensed by Customer. If Customer wants to license an available Version Upgrade, it must be purchased separately at an additional charge.

4.1.2 Call Center Support. Customer will receive, throughout each License Term, call center support services for the Licensed Product. Such call center support services are available Monday

through Friday during Pearson's normal business hours, exclusive of Pearson holidays. Call center support services may include a variety of methods of contact, including telephone, email and online "chat" support. Call center support services for the Licensed Product are limited to teachers and administrative staff at the Licensed Sites, and are not available to students or parents. Call center support is limited to support for technical issues that Customer experiences in use of the Licensed Product, and is not a substitute for training and does not include instructional guidance in the use of Licensed Product. If Customer has purchased any hardware (such as Apple iPads) through Pearson for use with the Licensed Product, Customer shall contact the hardware manufacturer for support issues regarding such hardware.

4.1.3 Website Access. Customer will receive, throughout each License Term, access to Pearson's product support website for the Licensed Product, as well as access to Pearson's on-demand training websites which offers product tutorials and interactive webinars, as well as a library of training guides and other resources.

4.2 Additional Support Options. In addition to the support and maintenance services described in Section 4.1 above that are included with any active license of the Licensed Product, additional support options may be available for additional fees.

4.3. Professional Development and Other Services. The payment of the Program Fee in connection with Customer's initial purchase entitles Customer to certain initial implementation services, including one day of onsite professional development. Additional professional development, consulting or implementation services are available for additional fees. The following terms apply to any such services:

4.3.1 Orders for Services; Applicable Fees. Pearson agrees to perform the professional services specified in the Order Documentation, or subsequently requested by Customer and agreed to be performed by Pearson, provided that Pearson may, at its option, arrange for any such services to be performed by another entity on behalf of Pearson. For services that are not included in the Program Fee, Customer agrees to pay for such services at the rates and charges specified in the Order Documentation or otherwise agreed upon in writing by Customer and Pearson. Pearson reserves the right to require a purchase order or equivalent documentation from Customer prior to performing any services, or to require prepayment of certain services. The rates and charges specified in the Order Documentation or otherwise mutually agreed upon in writing shall apply to those services originally ordered; however, Pearson reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. All services must be scheduled and delivered within twelve (12) months of the placement of the applicable order for services. Any unused services expire at the end of such twelve (12) month period.

4.3.2 Service Packages. Additional terms and/or restrictions may apply to certain services offerings. For example, with certain training packages, Customer may be required to schedule consecutive training days.

4.3.3 Expenses. In most cases, travel expenses are included in the fees charged by Pearson for any on-site services. However, Pearson reserves the right to require Customer to reimburse Pearson for travel expenses, lodging, meals and other related expenses incurred in the performance of such services, if so specified by Pearson in writing in Pearson's price quote or other Order Documentation.

4.4. Customer Responsibilities. In order to be eligible for support services for the Licensed Product, Customer shall: (a) supply Pearson with sufficient information and data to reproduce any Error or problem that is the subject of a support request; (b) procure, install, operate and

maintain computer hardware systems, operating system software, and other software, compatible with Pearson's minimum requirements for the version of Licensed Product to be supported; (c) establish adequate operational back-up provisions in the event of malfunctions or errors; (d) maintain an operating environment free of any programming that might interfere with the functioning of the Licensed Product as supplied by Pearson; and (e) have installed the most current release of the Licensed Product, or a prior release still supported by Pearson, as well as any Fixes made available to Customer by Pearson. In addition, for support offerings that include on-site service, Customer shall first use its best efforts to resolve the issue or problem via call center support; Pearson will not be obligated to dispatch a technician for on-site service unless Customer has followed Pearson's instructions and recommendations provided via call center support and such instructions and recommendations are insufficient to solve the problem.

5. PAYMENT TERMS. Customer shall pay an upfront Program Fee for the initial License Term, which is typically for one year (unless specified otherwise in the Order Documentation). The Program Fee includes access to the support and maintenance services described in Section 4.1 during the initial License Term, as well as certain initial training and implementation services. Customer may also purchase additional training, consulting or other implementation services beyond those that are included as part of the Program Fee, either as part of its initial order or subsequently. The Program Fee shall be due and payable in advance in accordance with Pearson's invoice terms. Renewal Fees for any renewal License Terms are invoiced in advance of the renewal date and are due prior to commencement of the renewal License Term. Customer agrees to pay to Pearson all applicable fees due hereunder, and all applicable sales, use or other taxes, however designated, except for taxes based on Pearson's income. Customer shall provide Pearson with proof of any claimed tax exemption, and shall be responsible for the payment of all applicable penalties, taxes and costs that may arise if the tax exemption proves inapplicable.

6. HOSTING SERVICES; SYSTEM AVAILABILITY. Certain portions of the Licensed Product will be hosted for Customer by Pearson (or by Pearson's designee; Pearson may use in-house services or a third party service provider to provide any hosting services in connection with the Licensed Product). Pearson will attempt to schedule any planned maintenance or upgrades at times when usage of the Licensed Product in the continental United States is typically low, and will attempt to communicate any outages associated with planned maintenance or upgrades to its customers in advance through its support website, via email, or through notifications within the Licensed Product. In addition, Customer acknowledges that Pearson may take the hosted portion of the Licensed Product down from time to time as necessary to perform unscheduled maintenance in response to emergencies or other unforeseen circumstances. Customer further acknowledges that the hosted portion of the Licensed Product is Internet accessible and that as such, in connection with Customer's use of the Licensed Product, some information may be transmitted over local exchange and Internet carrier lines, as well as through routers, switches and other devices owned, maintained and serviced by third parties, all of which are beyond the control of Pearson and which can be impaired or disrupted through no fault of Pearson. Pearson cannot control the flow of data over the Internet and assumes no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in connection with use of the Licensed Product.

7. TERM AND TERMINATION.

7.1 Term and Renewal. The initial License Term shall begin on the date that Pearson has made the Licensed Product available for Customer's use, and shall continue for a period consistent with the Program Fee paid to Pearson, which period is generally for one year (unless the Order

Documentation specifies otherwise). Either party may terminate this Agreement as of the end of the then-current License Term by providing written notice to the other party prior to the end of such License Term that such party does not wish to renew this Agreement. If no notice of non-renewal is given by either party, then Pearson will invoice Customer for the Renewal Fee applicable for a renewal License Term. Renewal periods are generally for one year, although other terms may apply in certain circumstances; the applicable renewal period will be stated on Pearson's invoice. If Customer pays the applicable Renewal Fee stated on Pearson's renewal invoice, then this Agreement will renew for the applicable renewal License Term stated on the invoice; otherwise, this Agreement will terminate at the end of Customer's current paid-up License Term. If this Agreement is terminated due to non-payment, and then Pearson subsequently reinstates Customer's access to the Licensed Product upon later receiving payment, any such reinstated access shall remain subject to the terms of this Agreement (unless Pearson provides new terms and conditions to Customer at the time of such reinstated access, in which case such new terms and conditions shall apply). The Renewal Fee for each renewal License Term shall be at Pearson's then-current applicable rates.

7.2 Termination. Either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; and Pearson may terminate this Agreement immediately upon written notice in the event Customer breaches, or threatens to breach, any of its obligations under Section 3. Sections 3.1, 3.2, 5, 10, 11, and 13 shall survive the termination of this Agreement.

8. LIMITED WARRANTY. During the term of this Agreement, Pearson shall attempt to correct any Errors in the Licensed Product, after receiving written notification of such Error from Customer. If Pearson is unable to correct the Error after a reasonable opportunity, Pearson shall, at Customer's request, refund to Customer a prorated portion of the applicable fees paid to Pearson hereunder for Customer's current License Term, computed from the date of Customer's notice as described above through the scheduled expiration date of the current License Term. In the event Customer exercises its option to request such a refund, Customer's license to use the Licensed Product shall terminate upon issuance of such refund. The foregoing remedy shall not apply to Errors resulting from Customer's acts or omissions. The foregoing states the complete and entire remedies that Customer has under this warranty. In no event will Pearson have any liability under this limited warranty to provide a refund or credit with respect to amounts paid by Customer for license periods prior to the then-current License Term.

9. HARDWARE WARRANTIES. If, in conjunction with Customer's license of the Licensed Product, Customer purchases any hardware through Pearson (including but not limited to Apple iPads), Customer acknowledges that such hardware purchase is facilitated by Pearson only as an accommodation to Customer. The warranties on any hardware not manufactured by Pearson will be limited to those provided by the manufacturers of such hardware and/or the vendors through which such hardware is being supplied. Pearson will pass through any manufacturer's or other vendor's warranty to the extent permitted by the manufacturer or other vendor, as applicable. Customer agrees to look solely to the applicable manufacturer or other vendor, and not to Pearson, to fulfill any such warranties and any maintenance, repair or other service obligations related to such hardware. Customer further agrees that any claims related to any such hardware, whether for breach of warranty or otherwise, must be made directly against the applicable manufacturer or other vendor, and not against Pearson, and that Pearson shall have no liability whatsoever in connection with such claims.

10. DISCLAIMER OF OTHER WARRANTIES. THE WARRANTIES SET FORTH IN SECTION 8 AND 9 ABOVE CONSTITUTE THE ENTIRE STATEMENT OF PEARSON AS TO WARRANTIES FOR THE LICENSED PRODUCT, SUPPORT, SERVICES AND OTHER ITEMS PROVIDED HEREUNDER. PEARSON AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES OR CONDITIONS OTHERWISE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. FURTHERMORE, PEARSON DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE RESULTS OF USING THE LICENSED PRODUCT IN TERMS OF ITS CORRECTNESS, PEDAGOGICAL EFFECTIVENESS OR OTHERWISE.

11. LIMITATION OF LIABILITY. PEARSON AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST FUNDING, LOST SAVINGS, LOST OR DAMAGED DATA; OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR CLAIMS OF A THIRD PARTY; ARISING FROM THIS AGREEMENT, THE LICENSED PRODUCT, SUPPORT, SERVICES OR OTHER ITEMS PROVIDED HEREUNDER, OR ARISING FROM THE USE OF OR INABILITY TO USE THE LICENSED PRODUCT, EVEN IF PEARSON OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORSEEABLE. IN NO EVENT WILL THE LIABILITY OF PEARSON AND ITS LICENSORS FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE FEES PAID FOR THE LICENSED PRODUCT OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED DURING CUSTOMER'S THEN-CURRENT LICENSE TERM.

12. STUDENT DATA.

12.1 Retention of Student Data. A student's data will be hosted and available for extraction for up to six (6) years after such student has enrolled in the Licensed Product. It is Customer's responsibility to extract any reports or student data that Customer desires to retain prior to the expiration of this time period.

12.2 Confidentiality. To the extent that, during performance of this Agreement, Pearson comes into contact with or has access to any

Customer confidential information, Pearson agrees to use commercially reasonable efforts to maintain the confidentiality of such Customer confidential information, and to use such information solely for purposes of performing services hereunder. Pearson shall require its employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Customer confidential information" shall mean any of Customer's student or personnel data or records, and any other Customer information or data labeled or identified as confidential at the time of disclosure; provided, however, that this definition and the obligations of this Section shall not extend to any information that: (a) is or becomes publicly known through no fault or negligence of Pearson, its employees, agents or subcontractors; (b) is or becomes lawfully available from a third party without restriction; (c) is independently developed by Pearson, its employees, agents or subcontractors at any time; or (d) is disclosed without restriction by Customer to any third party at any time.

12.3 Use of Aggregated Data. Pearson may use commercially available analytical tools to obtain aggregated data (not including any personally identifiable student information) regarding usage of the features of the Licensed Product, and any products or content accessed through the Licensed Product, to assist Pearson in providing, maintaining, improving, and promoting Pearson's products and services and in protecting the rights or property of Pearson, its licensors and users.

13. GENERAL. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN. No action, regardless of form, may be brought by Customer more than one year after the cause of action has arisen. In the case of notices to Pearson, such notices shall be sent to: Pearson, Attn.: Contracts Department, 3075 W. Ray Road, Suite 200, Mailstop 315, Chandler, AZ 85226. In the case of notices to Customer, such notices shall be sent to Pearson's address of record for Customer. Either party may change its notice address by notifying the other in like manner. Pearson may also offer the Licensed Product and related support and services described in this Agreement through its affiliates, including NCS Pearson, Inc.

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